

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAHAAB L. CHILDS,

Defendant-Appellant.

UNPUBLISHED

October 7, 1997

No. 193963

Recorder's Court

LC No. 95-012125

Before: Bandstra, P.J., and Murphy and Young, JJ.

PER CURIAM.

Defendant appeals by right from his bench trial conviction for possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant was sentenced to two to twenty years' imprisonment. We affirm.

Defendant claims that the trial court erred in failing to suppress the heroin taken from defendant's person after he was arrested. Defendant essentially argues that the police officers did not have probable cause to arrest him for the charged offense of possession with intent to deliver less than fifty grams of heroin, and, thus, that any evidence obtained incident to the arrest must be suppressed. A trial court's decision whether to suppress evidence is reviewed under the clearly erroneous standard. *People v Yeoman*, 218 Mich App 406, 409-410; 554 NW2d 577 (1996). "Clear error exists when the reviewing court is left with the definite and firm conviction that a mistake has been made." *People v Kurylczyk*, 443 Mich 289, 303; 505 NW2d 528 (1993).

While we agree with defendant that the officers did not have probable cause to arrest defendant for a narcotics violation prior to the discovery of the heroin in defendant's pocket, our review of the record indicates that defendant was in fact arrested for entering a vacant dwelling without the owner's permission, an ordinance violation. A police officer may arrest without a warrant if the facts and circumstances within the officer's knowledge was sufficient to lead a reasonable person to conclude that the defendant was committing a misdemeanor or ordinance violation in his presence. *People v Sinistaj*, 184 Mich App 191, 198; 457 NW2d 36 (1990); *People v Morris*, 66 Mich App 514, 517; 239 NW2d 649 (1976); MCL 764.15(1)(a); MSA 28.874(1)(a).

The officers in this case possessed information that the house in question was vacant. Upon their arrival, the officers were justifiably concerned with the presence of individuals in a house that was believed to be unoccupied. As Officer Coleman walked to the front porch, he saw three males run toward the back of the house. Officer Coleman immediately relayed this information to Officers Jakeway and Gracer. Meanwhile, Officer Jakeway observed that the home's electric and gas meters had been tampered with. Under these circumstances, we find that Officer Jakeway had reason to believe that defendant had committed a misdemeanor or ordinance violation in his presence. Thus, because defendant's arrest was lawful, the search was justified as incident to that arrest. *People v Solomon (Amended Opinion)*, 220 Mich App 527, 530; 560 NW2d 561 (1996).

Affirmed.

/s/ Richard A. Bandstra

/s/ William B. Murphy

/s/ Robert P. Young, Jr.